

## INITIAL STATEMENT OF REASONS

The following Initial Statement of Reasons has been prepared in regard to the proposal of the New Motor Vehicle Board of the State of California to add Section 565 of Article 2, Chapter 2, Division 1, of Title 13 of the California Code of Regulations.

### **INTRODUCTION**

The New Motor Vehicle Board ("Board") is an agency within the Department of Motor Vehicles ("Department") with oversight provided by Business, Transportation and Housing Agency. The Board consists of nine members, seven of which are appointed by the Governor, one by the Speaker of the Assembly, and one by the Senate Rules Committee (see Vehicle Code sections 3000 and 3001).

The duties of the Board include the following:

1. To Adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code governing those matters that are specifically committed to its jurisdiction.
2. To hear and determine "appeals" which are filed by specified occupational licensees within the new motor vehicle industry as a result of adverse disciplinary action taken by the Department against the license of such entity. (Vehicle Code section 3050(b)).
3. Consider any matter concerning the activities or practices of any person applying for or holding a specified type of occupational license. These disputes are considered by the Board as a result of the filing of a "petition", which may be done by any person. (Vehicle Code section 3050(c)).
4. To hear and decide "protests" filed by new motor vehicle dealers against their respective franchisors, pursuant to the provisions of the Automotive Franchise Act. (Vehicle Code sections 3050(d), 3060, 3062, 3064, 3065, and 3065.1). These protests pertain to specified types of franchise disputes between the dealer (franchisee) and the manufacturer or distributor (franchisor).

### **SECTION 565**

## **PURPOSE OF THE REGULATION**

In 2000, the California Legislature enacted Senate Bill 1819 [Stats. 2000, ch. 789], authored by Senator Dunn. This bill amended subdivision (o) of Vehicle Code section 11713.3 and specified limited circumstances in which a manufacturer, branch, or distributor may operate or control a dealership within ten miles of an independent, franchised dealer. Vehicle Code section 11713.3(o) designates two circumstances in which a manufacturer, branch, or distributor may operate or control such a dealership and not be deemed to be competing with the independent, franchised dealer: (1) owning or operating a dealership for a temporary period, not to exceed one year; and, (2) owning an interest in a dealer as part of a bona fide dealer development program that satisfies three requirements.

Vehicle Code section 11713.3(o)(2)(A) also provides that after a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the Board may extend (beyond one year) the time period.

The adoption of the proposed regulation would create a procedure whereby the Board could consider a request for an extension of time (beyond one year) by a manufacturer, distributor, or branch to own and operate a dealership within the relevant market area of an independent dealer of the same line-make in preparation for sale to a successor independent franchisee without the necessity of agendaizing the request and the formality of a Board meeting.

Further, the adoption of the proposed regulation creates a mechanism for forwarding the request for extension to all Board members for their consideration, establishes a time frame for filing the request for extension of time, and maintains the status quo while the Board considers the request for extension.

Without the proposed rulemaking, each request for extension would be considered on a case-by-case basis. Given that granting and considering such requests has not been delegated to the Executive Secretary (Executive Director), all such requests would be forwarded to the Board for consideration at a noticed meeting. Delay in reviewing requests for extension would occur if the Board did not meet on a regular basis or if time was of the essence in considering a request.

## **NECESSITY**

The proposed regulation is necessary to implement the provisions of Vehicle Code section 11713.3(o) which allows for an extension of time for a manufacturer, branch, or distributor to operate a dealership in preparation for sale to a successor independent

franchisee.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.**

The Board relied upon the provisions of Senate Bill 1819 and a New Motor Vehicle Board Policy and Procedure Committee Memorandum dated October 4, 2000, in adopting the proposed regulatory text.

## **ALTERNATIVES TO THE REGULATION**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

At the November 28, 2000, General meeting, wherein the Board preliminarily adopted the proposed regulatory text, no other alternatives were considered. However, the Board President, Robert T. (Tom) Flesh invited and encouraged the submission of written and oral comments. Furthermore, Mr. Flesh indicated that the Board instructing staff to go forward with the proposed rulemaking, did not necessarily indicate final Board action. If any written or oral comments were received, the full Board would consider the comments and reconsider the text of the proposed rulemaking. Lastly, if the staff decided that modifications to the proposed text were necessary, the Board would consider those modifications at a noticed meeting. If there were no written or oral comments received, then the rulemaking process will proceed without further Board involvement.